ARIEF INSTITUTE SDN. BHD.

v.

TAN SRI DATUK ABDUL SAMAD BIN IDRIS

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
GEORGE SEAH SCJ
SYED AGIL BARAKBAH SCJ
[CIVIL APPEAL NO. 194 OF 1984]
9 MARCH 1985

CIVIL PROCEDURE: *Trust - Land held in the name of 3 trustees - One of the trustees refused to transfer the land at the request of appellant - Whether trustee said to have wilfully refused or neglected to convey the said land.*

This is an appeal by the appellant against the dismissal by the learned Judge for a vesting order under s. 48(g) of the Trustee Act 1949. It is not disputed that Arief Institute was registered as a firm under the Registration of Businesses Ordinance 1956, and that later a company entitled Arief Institute Sdn. Bhd. was incorporated under the Companies Act 1965. Subsequently, a parcel of land was alienated to three persons as trustees for Arief Institute Malaysia. The appellant then passed a resolution to take over the assets and liabilities of Arief Institute. Two of the three trustees appeared to have signed the transfer except the respondent who failed to do so.

Held:

[1] The onus of establishing that the appellant was a "person entitled to require a conveyance of the said land" lies on the appellant. It would have been easy for the appellant to subpoena an officer of the Wilayah Pesekutuan Land Authority to produce the application for the said land. But this was not done and no explanation was put forward by the appellant for its non-production. The learned Judge was therefore constrained to hold that the appellant had failed to prove to his satisfaction that they were entitled to require the respondent for a conveyance of the said land to them.

[2] If the title of the person asking for the conveyance is disputed and the trustee entertains a *bona fide* doubt as to it, the trustee cannot be said to have wilfully refused or neglected to convey the said land.

[Appeal dismissed with costs]

Case referred to:
Re Mill's Trusts [1889] 40 Ch D 14

Legislation referred to:
Trustee Act 1949, (Revised - 1978 as Laws of Malaysia Act 208) s. 48(g)

For the appellant - Sri Ram; M/s. Sri Ram, Zulkifly & Kumar
For the respondent - Bakaruddin; M/s. Mutalib & Bakaruddi

JUDGMENT

George Seah SCJ:

This is an appeal by Arief Institute Sdn. Bhd. (the appellant) against a dismissal of the learned Judge for a Vesting Order under s. 48(g) of the Trustee Act 1949 (Revised - 1978 as Laws of Malaysia Act 208). It is common ground that on 9 March 1971 Siti Mariam binti Pilus and Raun bin Djalil Atmosumarto registered a firm called Arief Institute under the Registration of Businesses Ordinance 1956 *vide* Certificate No. 156906. Subsequently, a company entitled Arief Institute Sdn. Bhd. was incorporated under the Companies Act 1965 *vide* Certificate No. 4134/77 on 25 November 1977, with Siti Mariam and Raun as the only subscribers. And on 4 July 1978 the Wilayah Persekutuan Land Authority alienated a parcel of land held under HS (D) 20367 Lot 15 Section 69 in the District of Wilayah Persekutuan in the town of Kuala Lumpur (hereinafter referred to as the said land) to (1) Abdul Samad bin Idris, (2) Abu Baker bin Lazim and (3) Haji Sulani bin Haji Taib, as trustees for Arief Institute Malaysia, 70X Jalan Keramat Hujung, Kuala Lumpur. It seems not to be in dispute that the land premium of RM200,219 appeared to have been paid by Arief Trading Sdn. Bhd.

On 25 November 1977 the appellant purported to pass the following resolution, viz:

> Resolved that the company, Arief Institute Sdn. Bhd. do take over all the assets liabilities of Arief Institute with immediate effect.

Steps are taken to request all the three trustees to covey the said land to the appellant. It seems that two of the three trustees appeared to have signed the memorandum of transfer of the said land in favour of the appellant but only trustee, Abdul Samad bin Idris (hereinafter called the respondent) failed to do so.

Now, s. 48 provides that "In any of the following cases, namely:

> (g) where a trustee jointly or solely entitled to or possessed of any interest in the land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;
>
> the Court may make an Order (in this Act called a Vesting Order) vesting the land or interest therein in any such person in any such manner and for any such interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:
>
> Provided that -
>
> (A) where the contract is consequential on the appointment of a trustee the land or interest therein shall be vested for such interest as the Court may direct in the persons who on the appointment are the trustees; and
>
> (B) where the order relates to a trustee entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled either alone or with any other person the Court may appoint.

The first question to be considered was whether or not the appellant was a "person entitled to require a conveyance of the said land"? The onus of establishing this lies on the appellant.

Learned Counsel for the appellant submitted that in or about 1976 the application for the said land was made by the firm, Arief Institute. For the respondent, it was contended that the application was made by him and his co-trustees acting for and on behalf of a Board of Committee of Arief Institute Malaysia.

In our opinion, it would have been easy for the appellant to subpoena an officer of the Wilayah Pesekutuan Land Authority to produce this application form and the question could have been resolved once and for all.

But they had not done so and no explanation had been put forward by learned Counsel for the appellant for its non-production. We are not surprised that the learned Judge was constrained to hold that the appellant had failed to prove to his satisfaction that they were entitled to require the respondent for a conveyance of the said land to them. In *re Mill's Trusts* [1889] 40 Ch D 14 it was decided by the English Court of Appeal that if the title of the person asking for the conveyance is disputed and the trustee entertains a *bona fide* doubt as to it, the trustee cannot be said to have wilfully refused or neglected to convey the said land.

For the above reasons, we are of the opinion that the judgment appealed from ought to be affirmed. The appeal is therefore dismissed with costs to the respondent to be taxed. The deposit to be paid to the respondent towards account of taxed costs.

Also found at [1985] 2 CLJ 8